

**BEFORE THE  
COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Complaint of MCI WorldCom, Inc. against )  
New England Telephone and Telegraph )  
Company d/b/a Bell Atlantic – Massachusetts) D.T.E. 97-116  
For breach of interconnection terms entered )  
Into under Sections 251 and 252 of the )  
Telecommunications Act of 1996 )

**COMMENTS OF SPRINT COMMUNICATIONS COMPANY, L.P.**

Sprint Communications Company, L.P. (“Sprint”) hereby respectfully submits these comments in response to the Department of Telecommunications and Energy (“Department”) request for comments on the effect of the Federal Communications Commission (“FCC”) adopted Order in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131 (released April 27, 2001) (“Order on Remand”) on the issue of reciprocal compensation for Internet service provider (ISP)-bound traffic in Massachusetts.

**BACKGROUND**

In Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a/ Bell Atlantic – Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996, D.T.E. 97-116-C at 19-31 (1999), the Department determined that ISP-bound traffic constitutes “non-local interstate” traffic, rather than “local” traffic subject to reciprocal

compensation pursuant to approved interconnection agreements. The Department approved a 2:1 ratio of terminating to originating traffic, the excess of which would be considered to be terminating to an ISP and, thus, excluded from reciprocal compensation payments unless the submitting CLEC provides evidence that its non ISP-bound traffic exceeds the 2:1 ratio. Id. at 28 n. 31.

On July 11, 2000, the Department issued D.T.E. 97-116-E at 15 and determined that it would preserve the status quo as created by the Department's decision in D.T.E. 97-116-C regarding payment of reciprocal compensation for ISP-bound traffic until the FCC acted on remand. On April 27, 2001, the FCC released the Order on Remand.

### **DISCUSSION**

The FCC's Order on Remand concludes that traffic delivered to an ISP is "information access" subject to §251(g) of the Communications Act of 1934 ("Act"), 47 U.S.C. §251(g), and therefore is not subject to the reciprocal compensation obligations of §251(b)(5) of the Act. Instead, traffic delivered to an ISP is predominantly interstate access traffic subject to §201 of the Act and the FCC, not the state commissions, have jurisdiction to establish the cost recovery mechanism for the exchange of such traffic.<sup>1</sup>

The Order on Remand establishes a phased-in compensation mechanism for ISP-bound traffic that becomes effective with the effective date of the Order on Remand and continues for 36 months or until the FCC takes further action, whichever is later.<sup>2</sup> The FCC did adopt a rebuttable presumption that traffic that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation mechanism

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<sup>1</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation of ISP-Bound Traffic, Order on Remand and Report and Order, CC Dockets 96-98 and 99-68, Released April 27, 2001, at 34 – 65.

<sup>2</sup> Id. at 78.

established in the Order and allowed for the carrier to rebut the presumption as the Department did in D.T.E. 97-116-C, at 28, n.31.<sup>3</sup> Finally, carriers who are not exchanging traffic as of the effective date of the Order will exchange ISP-bound traffic on a bill-and-keep basis during the interim period.<sup>4</sup>

The Order on Remand specifically limits the interim compensation regime to re-negotiated interconnections agreements, not existing contractual obligations, unless they contain a change-in-law clause; does not preempt any state commission decision regarding compensation for ISP-bound traffic; removes the state commission's authority to address the issue; and prevents carriers, as of the date the Order was published in the Federal Register, from invoking §251( i) to opt into an existing interconnection agreement with regard to rates for ISP-bound traffic.<sup>5</sup>

## **CONCLUSION**

The Order on Remand firmly establishes the FCC's authority to establish rates for ISP-bound traffic as well as creating the interim compensation mechanism to transition the market to a bill-and-keep intercarrier compensation regime.

As of the effective date of the Order the impacts to the Massachusetts market are as follows:

- all existing contractual obligations for reciprocal compensation of ISP-bound traffic will not be effected unless they also contain a change-in-law clause, which will require the carriers to adhere to the FCC's interim compensation regime;

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<sup>3</sup> Id. at 79

<sup>4</sup> Id. at 80

<sup>5</sup> Id. at 82

- all new agreements between carriers who are not exchanging ISP-bound traffic, as of the effective date of the Order, will exchange traffic on a bill-and-keep basis during the interim period; and
- the Department will no longer be required to determine rates for ISP-bound traffic.

Consequently, with regard to ISP-bound traffic issues, the FCC will govern the Massachusetts market.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.

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